



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

**[EPA-R10-RCRA-2021-0439; FRL-8853-02-R10]**

### **Oregon: Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final authorization.

**SUMMARY:** Oregon applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Oregon's application and has determined that these changes satisfy all requirements needed to qualify for authorization. EPA sought public comment under Docket #EPA-R10-RCRA-2021-0439 from October 5, 2021, to November 4, 2021, prior to taking this final action to authorize these changes. EPA received five comments, only one of which was adverse. EPA's response to the comment and rationale for this final action are provided below.

**DATES:** This final authorization is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Margaret Olson, U.S. Environmental Protection Agency, Region 10, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205, phone number: (503) 326-5874, e-mail: [olson.margaret@epa.gov](mailto:olson.margaret@epa.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **A. Why are revisions to state programs necessary?**

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be

necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

Oregon State's hazardous waste management program received final authorization on January 30, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. As explained in section E of this document, Oregon's program has been revised and reauthorized numerous times since then. On October 16, 2020, Oregon submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between October 22, 1998, and April 17, 2015. The below rules have been adopted by Oregon as of July 12, 2017. The Federal rules adopted by Oregon include the Hazardous Waste Manifest Printing Specifications Correction Rule (76 FR 36363, June 22, 2011), Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement; Closure Process (63 FR 56710, October 22, 1998), Used Oil Management Standards (75 FR 76633, September 8, 2005), Standardized Permit for RCRA HW Management Facilities (70 FR 53420, September 8, 2005), NESHAP: Standards for RCRA HW Management Facilities (73 FR 18970, April 8, 2008), Amendment to Hazardous Waste Code F019 (73 FR 31756, June, 4, 2008), Academic Laboratories Generator Standards (73 FR 72911, December 1, 2008), Export Shipments of Lead-Acid Batteries (75 FR 1236, January 9, 2010), Hazardous Waste Technical Corrections and Clarifications Rule (75 FR 12989, March 18, 2010), Withdrawal of the Emissions Comparable Fuel Exclusion (75 FR 33712, June 5, 2010), Removal of Saccharin and its Salt from the Lists of Hazardous Constituents (75 FR 78918, December 17, 2010), Academic Laboratories Generator Standards Technical Corrections (75 FR 79304, December 20, 2010), Revision of the Treatment Standards for Carbamate Wastes (76 FR 34147, June 13, 2011), Hazardous Waste Technical Corrections and Clarifications Rule (77 FR 22229, July 31, 2013), Conditional

Exclusions for Solvent-Contaminated Wipes (78 FR 46447, July 31, 2013), Modifications of Hazardous Waste Manifest System: Electronic Manifest (79 FR 7518, February 7, 2014), Revisions to the Export Provisions of the Cathode Ray Tube (78 FR 36220, June 26, 2014), Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015), and Disposal of Coal Combustion Residues from Electric Utilities (80 FR 21301, April 17, 2015). Of the 19 rules being authorized by this action, some State rules contain more stringent and/or broader in scope provisions. For identification of these provisions refer to the authorization revision application's Attorney General Statement and Checklists found in the docket for this action.

The EPA is authorizing Oregon's revised hazardous waste program in its entirety through July 12, 2017, as described above.

**B. What decisions has EPA made in this action?**

EPA has reviewed Oregon's application to revise its authorized program and has determined that it meets the statutory and regulatory requirements established by RCRA. Therefore, EPA is granting Oregon final authorization to operate its hazardous waste management program with the changes described in the authorization revision application and supporting materials. Oregon will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country (18 U.S.C. 1151)) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oregon, including issuing permits, until Oregon is granted authorization to do so.

**C. What Is the effect of this final authorization decision?**

A person in Oregon subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements. Additionally, such persons will have to comply with any applicable Federal requirements, such as HSWA regulations issued by EPA for which the State has not received authorization and RCRA requirements that are not supplanted by the authorized State requirements. Oregon will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements;
- Suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize in Oregon are already effective under state law and are not changed by the act of authorization.

#### **D. What were the comments received on this authorization action?**

The EPA received five comments during the public comment period of this action (86 FR 54894, October 5, 2021), four of which were supportive, and one of which was opposed to this action. All the comments received are included in the docket for this action.

The adverse commenter questioned EPA's authorization of Oregon's rule conditionally excluding solvent-contaminated wipes from RCRA requirements, stating: "why is Oregon proposing a more stringent ruling on solvent-contaminated wipes when they can easily be excluded using broad language under the EPA?" The commenter also raised questions about how solvent-contaminated wipes would be managed under Oregon's rule. According to the commenter, "[t]he plan for how the wipes will be taken care of now that they are classified as hazardous waste should be addressed before the approval is completed for this proposal."

RCRA Section 3006 sets forth three criteria EPA must evaluate in determining whether to authorize a State program: whether the State program is equivalent to the Federal program; whether the State program is consistent with Federal or State programs applicable in other States; and, whether the State program provides adequate enforcement of compliance with RCRA requirements. In addition, under RCRA Section 3009, states may adopt RCRA programs that are more stringent than Federal regulations, and EPA may authorize and enforce such more-stringent regulations. See 40 CFR 271.1(i)(1).

As noted in EPA's proposed action and in this final authorization, EPA has determined that Oregon's changes to its hazardous waste program—including the State's adoption of the conditional exclusion for solvent-contaminated wipes—meet the statutory criteria for authorization under RCRA Sections 3006 and 3009. EPA's exclusion for solvent-contaminated wipes is codified at 40 CFR 261.4(b)(18), and Oregon adopts by reference that provision at OAR 340-100-0002(1), with the exception of changes to the Federal rule identified at OAR 340-101-0004(3) through (5), which eliminate certain disposal options from the exclusion. In other words, Oregon's rules are consistent with EPA's rules with regard to management of excluded solvent-contaminated wipes and are more stringent with regard to their disposal. Thus, EPA has determined that Oregon's requested changes to its hazardous waste program are consistent with RCRA requirements and is finalizing authorization of those changes in this action.

#### **E. What has Oregon previously been authorized for?**

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); September 10, 2002, effective September 10, 2002 (67 FR 57337); June 26, 2006 effective June 26, 2006 (71 FR 36216); and January 7, 2010, effective January 7, 2010 (75 FR

918).

**F. What changes is the EPA authorizing with this action?**

EPA is authorizing revisions to Oregon's authorized RCRA program as described in Oregon's official program revision application, submitted to EPA on October 16, 2020, and deemed complete by EPA on November 19, 2020. EPA has determined that Oregon's hazardous waste management program revisions as described in the October 16, 2020 State's authorization revision application satisfy the requirements necessary to qualify for final authorization.

Oregon's authorized hazardous waste management program, as amended by these provisions remains equivalent to, consistent with, and is no less stringent than the Federal RCRA program. Therefore, EPA is granting Oregon's request for RCRA program authorization revision for the program changes as noted in Section A of this document.

**G. Where are the revised State rules different from the Federal rules?**

Under RCRA Section 3009, the EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are allowed but are not authorized. State rules that are equivalent to, determined functionally equivalent, and State rules that are more stringent than the Federal program may be authorized, in which case those provisions are federally enforceable.

The following Oregon provisions documented in this authorization action are more stringent than the Federal program:

- Oregon is more stringent than the Federal program at OAR 340-102-0041(2) by requiring annual reporting rather than biennial reporting.
- Oregon is more stringent than the Federal program at OAR 340-102-0200(4) which requires when opting-in to Subpart K, an eligible academic entity is required to submit their completed Laboratory Management Plan as defined in 40 CFR 262.214.
- Oregon is more stringent than the Federal program at OAR 340-102-0200(2) which

requires container labels be affixed or attached to the container and eliminates the possibility of these labels being associated with the wrong container.

- Oregon is more stringent than the Federal program at OAR 340-101-0004(4) and (5) by requiring containers of solvent contaminated wipes be either laundered or disposed as hazardous waste. Oregon does not allow disposal of solvent contaminated wipes in a municipal landfill or non-hazardous waste incinerator.

Oregon is broader in scope than the Federal program documented in this authorization action by requiring academic laboratories that opt into subpart K to obtain an EPA identification number.

#### **H. Who handles permits after the final authorization takes effect?**

Oregon will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. Permits issued by EPA prior to authorizing Oregon for these revisions would continue in force until the effective date of the State's issuance or denial of a State hazardous waste management permit, at which time, EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

#### **I. How does this action affect Indian Country (18 U.S.C. 1151) in Oregon?**

Oregon is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon.
- Any land held in trust by the U.S. for an Indian tribe; and

- Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

## **J. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action will authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy



Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in authorizing Oregon’s updated RCRA program, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this action is not subject

to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801-808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 4, 2022

Michelle Pirzadeh,

*Acting Regional Administrator, Region 10.*

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